

1 Edward W. Swanson, SBN 159859
2 eswanson@swansonmcnamara.com
3 SWANSON & McNAMARA LLP
4 300 Montgomery Street, Suite 1100
5 San Francisco, California 94104
6 Telephone: (415) 477-3800
7 Facsimile: (415) 477-9010

8
9 Attorney for ROBERT G. TUNNELL, JR.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No. CR. 3:11-00463 CRB

Plaintiff,

**STIPULATION AND [PROPOSED]
ORDER CONTINUING SENTENCING
HEARING FROM APRIL 18, 2012 TO
APRIL 20, 2012**

vs.

ROBERT G. TUNNELL, JR.,

Defendant.

For the reasons set forth below, the parties and the Probation Officer respectfully request that sentencing in this matter be continued from April 18, 2012 at 2:15 p.m., to April 20, 2012 at 3:00 p.m., or, in the alternative, to April 20, 2012 at 9:00 a.m. Defendant Robert G. Tunnell, Jr., by and through his counsel, Edward W. Swanson, and the United States, by and through Assistant United States Attorney W. Douglas Sprague, hereby stipulate and agree as follows:

1. On November 22, 2012, following the entry of a guilty plea by the defendant, the
 2 Court set a sentencing date of February 22, 2012.

3. On February 10, 2012, the parties moved the Court to continue the sentencing
 4 date to April 18, 2012 at 2:15 p.m. The continuance was requested to accommodate defense
 5 counsel's trial schedule, as well as the Probation Officer's schedule. At the time the continuance
 6 was requested, defense counsel was engaged in a trial before this court in *United States v.*
 7 *Herholz and Arnold* (No. CR. 10-0642). The trial was scheduled to last through February,
 8 following which defense counsel was scheduled to be in trial in San Francisco Superior Court for
 9 two to three weeks beginning February 27, 2012, and then in trial in Fresno Superior Court
 10 beginning March 26, 2012.

13. At the time of the February 10, 2012 request to move the sentencing date, defense
 14 counsel believed he would be able to complete trial in all of the matters referenced above before
 15 the proposed April 18, 2012 sentencing date.

16. Since the date of that request, however, defense counsel has begun trial in *People*
 17 *of the State of California v. Tannen Soojian*, (Cal. Sup. Crt. No. F04902626). On March 26,
 18 2012, pre-trial motions hearings in the matter of the *People of the State of California v. Tannen*
 19 *Soojian*, (Cal. Sup. Crt. No. F04902626) began in Fresno Superior Court. The start of the trial in
 20 that case was delayed due to the unanticipated need to conduct evidentiary hearings on motions
 21 *in limine*. Jury selection began on Monday, April 9, and is still underway. Other developments
 22 in the case have caused defense counsel to expect trial to last between 5 and 6 weeks.
 23

25. Because of defense counsel's trial schedule he is unavailable to proceed with
 26 sentencing on April 18, 2012.
 27
 28

1 6. The *People v. Soojian* court has not scheduled any regular “dark days” for the
2 duration of the trial. At defense counsel’s request, and in order not to delay further the
3 sentencing of Mr. Tunnell, defense counsel has obtained one dark day from the Fresno trial court
4 on April 20, 2012.

5 7. Defense counsel has a pre-existing commitment to serve as an expert appointed
6 by Judge Wilken in the state prison litigation (*Armstrong v. Brown*, No. C 94-2307 CW) in
7 Sacramento on April 20, 2012 from 10:00 a.m. to approximately 1:00 p.m. As such, defense
8 counsel respectfully requests the sentencing hearing in this matter be set for 3:00 p.m. on April
9 20, or, if that time is not convenient for the Court, at 9:00 a.m. on April 20.
10

11 8. Both Assistant United States Attorney W. Douglas Sprague and United States
12 Probation Officer Catheryn Grier are available at 9:00 a.m. and 3:00 p.m. on April 20.
13

14 IT IS SO STIPULATED.
15

16 Dated: April 11, 2012

/s /
Edward W. Swanson
SWANSON & McNAMARA LLP
Attorneys for defendant ROBERT G.
TUNNELL, JR.

19 Dated: April 11, 2012

/s /
W. Douglas Sprague
Assistant United States Attorney

[PROPOSED] ORDER CONTINUING SENTENCING HEARING

This matter having come before me pursuant to stipulation of the parties and good cause appearing therefore,

IT IS SO ORDERED THAT: the sentencing hearing now set for April 18, 2012 at 2:15 p.m. is vacated and the matter is set for sentencing on April 20, 2012 at 3:00 p.m..

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: April 12, 2012


Hon. CHARLES R. BREYER
United States District Court Judge